



December 6, 1999

Ms. Cynthia N. Milne
Deputy General Counsel - Opinions
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR99-3500

Dear Ms. Milne:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID#129960.

The Texas Department of Criminal Justice (the "department") received an open records request for "any and all transparencies used in the Cultural Diversity Training Class." In response to the request, you submit to this office for our review the information which you assert is responsive. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the arguments and exceptions you raise and reviewed the submitted information.

At the outset, we note that in your initial letter to this office, dated September 29, 1999, you only raised section 552.107 as an applicable exception. However, in your subsequent letter, dated October 13, 1999, you appear to represent that although section 552.107 was initially claimed, "the appropriate exception is 552.103." We note, however, that you raised section 552.103 only after the tenth business day following the department's receipt of the open records request. Generally, a governmental body that seeks to avail itself of an exception from disclosure must assert that exception within ten business days of receiving the request for information.¹ Gov't Code § 552.301. The failure to timely raise an exception results in the presumption that the information is public. Gov't Code § 552.302. Because you did not raise section 552.103 in a timely manner, this exception is presumed to be waived. This

¹Generally, a governmental body may waive a claim under sections 552.103 and 552.107 of the Government Code. See Open Records Decision Nos. 586 (1991), 551 (1990), 473 (1987), 470 (1987), 177 (1977).

presumption can be overcome only by a demonstration that compelling reasons exist to withhold the information. Open Records Decision No. 515 at 6 (1988). You have made no such demonstration with regard to section 552.103. We, therefore, deem this exception as being waived.

You also assert that the information at issue is protected by section 552.107 of the Government Code. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. ORD 574 at 5. Section 552.107(1) does not except purely factual information from disclosure, nor does it protect information gathered by an attorney as a fact-finder. Open Records Decision Nos. 574 (1990), 559 (1990), 462 (1987). Section 552.107(1) does not except from disclosure factual recounting of events or the documentation of calls made, meetings attended, and memoranda sent. ORD 574 at 5. Based on the records at issue, we conclude that the documents you have submitted do not contain any information subject to protection under section 552.107 of the Government Code. Therefore, the requested information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

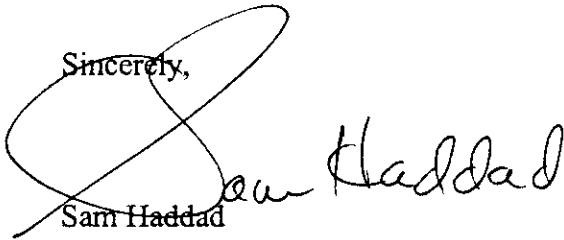
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one

of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Haddad", is written over the word "Sincerely," and extends to the right.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref: ID# 129960

Encl. Submitted documents

cc: Mr. Travis Gene Treece
11831 Calvary Road
Willis, Texas 77378
(w/o enclosures)